

## PROSECUTION STAFF REPORT

### **ADMINISTRATIVE CIVIL LIABILITY ORDER FOR ROBERT L. FRENCH CIRCLE A GAS STATION MARYSVILLE, YUBA COUNTY**

#### **INTRODUCTION**

On 2 July 1997, three 8,000 gallon USTs containing three grades of unleaded gasoline were excavated and removed from a common basin in the southeast portion of the Circle A Gas Station, a gasoline service station located at 1215 East 22<sup>nd</sup> Street, Marysville, Yuba County, California (Site). An approximately ½ -inch diameter hole was visible along a seam near the bottom of one of the tanks. The UST basin was over-excavated at this time to remove impacted soil identified during the removal. Total petroleum hydrocarbons as gasoline (TPH-g), MtBE, and benzene, toluene, ethylbenzene, and total xylenes (BTEX) were detected in two samples collected at a sampling depth of 22 feet, the bottom of the over-excavation. The samples had contamination concentrations high enough to suggest groundwater may have been impacted and Yuba County Office of Emergency Services issued a letter on 9 July 1997 requesting that a work plan for a subsurface investigation be submitted by 1 October 1997. Further excavation to remove these elevated concentrations of petroleum constituents was not conducted, the requested work plan was not submitted, and groundwater monitoring wells have not been installed.

An unauthorized release form was not filed by Robert L. French or any other responsible party upon discovery of the release as required by CWC section 13272. On 30 December 2003, the Yuba County Office of Emergency Services submitted an Unauthorized Release (Leak)/Contamination Site Report naming Robert L. French as the responsible party. Robert L. French is a responsible party because he owned the property at the time petroleum hydrocarbons were discharged/released and because he is the current owner of the property.

On 30 December 2003, the Yuba County Office of Emergency Services issued a letter to Robert L. French and Stockton Marketing, Inc. requesting a work plan for a subsurface investigation that was to include, at a minimum, soil borings to define the vertical and horizontal extent of contamination and the installation of monitoring wells. This work plan was to be submitted by 16 February 2004. Robert L. French responded to this request on 5 January 2004, stating that when the USTs were removed in 1997, there was only soil pollution and that the impacted soil had been removed. During a subsequent January 2004 Phase II investigation for a property transfer, three groundwater samples were obtained from each of three soil borings and MtBE was detected at 2,100 ug/l in one of the three groundwater samples, thus confirming that groundwater has been impacted by petroleum hydrocarbons from the former UST system. After Mr. French did not submit the requested work plan, Yuba County referred the case to the California Regional Water Quality Control Board, Central Valley Region (Regional Water Board).

During the next two years, the Regional Water Board staff requested Mr. French to submit work plans for subsurface investigation on three separate occasions, which he did not do.

On 20 November 2006, the Executive Officer of the Regional Water Board issued Cleanup and Abatement Order (CAO) No. R5-2006-0722 to Robert L. French and Stockton Marketing Inc., which required the investigation and cleanup of a release of petroleum hydrocarbon constituents. To date, Robert L. French has not complied with CAO No. R5-2006-0722 or any previous Regional Water Board or Yuba County staff directives. By failing to comply with the CAO and by failing to initiate a subsurface investigation, Robert L. French has created the need for the Regional Water Board to seek emergency funds through the Emergency, Abandoned, and Recalcitrant (EAR) Account to investigate the extent of petroleum hydrocarbon constituents beneath the Site.

### **VIOLATIONS OF CLEANUP AND ABATEMENT ORDER NO. R5-2006-0722**

Robert L. French has failed to perform the following tasks required in CAO No. R5-2006-0722:

- CAO No. R5-2006-0722, Order 4, required Robert L. French to: "***By 15 January 2007, submit a Site Investigation Workplan (Workplan) to collect a sufficient number of soil, soil vapor and groundwater samples to determine the lateral and vertical extent of waste constituents and the complete site characterization.***" Robert L. French has not submitted the *Workplan*.
- CAO No. R5-2006-0722, Order 5, required Robert L. French to: "***Within 30 days of staff concurrence with the Workplan, but no later than 28 February 2007, implement the workplan.***" Robert L. French has not implemented a *Workplan*.
- CAO No. R5-2006-0722, Order 6, required Robert L. French to: "***Submit results of the site investigation in a Preliminary Investigation and Evaluation Report (PIER) no later than 30 April 2007.***" The PIER was to include recommendations and, if needed, a second work plan for additional investigation. If additional investigation was necessary, the second work plan was to include a time schedule for completing the work and submitting the results. Robert L. French has not submitted the PIER.
- CAO No. R5-2006-0722, Order 8, required Robert L. French to: "***Upon defining the extent of wastes, but no later than 15 August 2007, submit a Problem Assessment Report (PAR) which includes information from the implementation of the Workplan and sufficient detail on the nature and extent of the release to provide a basis for future decisions regarding subsequent cleanup and abatement actions.***" Robert L. French has not submitted the PAR.
- CAO No. R5-2006-0722, Order 9, required Robert L. French to: "***By 30 September 2007, submit a Feasibility Study that provides a summary of remedial alternatives evaluated to address applicable cleanup levels for the affected or threatened human health and/or waters of the State.***" Robert L. French has not submitted the Feasibility Study.
- CAO No. R5-2006-0722, Order 15, required Robert L. French to: "***By 15 May 2007, submit a risk assessment to demonstrate whether the contamination poses unacceptable risks to human health or the environment. The site-specific risk assessment must use the***

*Office of Environmental Health Hazard Assessment (OEHHA) toxicity data (California cancer slopes)."* Robert L. French has not submitted the required risk assessment.

- CAO No. R5-2006-0722, Order 16, required Robert L. French to: "**By 31 July 2007, submit a Public Participation Plan to solicit the public's concerns and disseminate information to the public regarding the investigation and proposed cleanup activities at the sites.**" Robert L. French has not submitted a Public Participation Plan.

## **ADMINISTRATIVE CIVIL LIABILITY**

The Discharger has violated CAO No. R5-2006-0722 and the California Water Code. On 8 July 2008, the Assistant Executive Officer issued an ACL Complaint proposing the Discharger pay \$50,000 to the State's Cleanup and Abatement Account for violating provisions of the CAO.

The ACL Complaint required that payment be made by 31 July 2008, or a hearing would be scheduled before the Regional Board during its 11/12 September 2008 Board meeting. The Discharger has not met the deadline to pay the ACL Complaint, has not signed the Waiver of Hearing, and does not seem to be on track to resolve the issues. Therefore a hearing has been scheduled before the Regional Board.

In determining the amount of any civil liability pursuant to CWC Section 13327, the Regional Water Board must take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and other matters as justice may require. These factors were considered as follows:

### **Enforcement Considerations**

As of 30 June 2008, the Dischargers have accrued 2,784 days of violations for failing to perform separate and distinct required actions under CAO No. R5-2006-0722. Based on a statutory maximum penalty of \$5,000 per day per violation, the maximum liability for these 2,784 violations is thirteen million, nine hundred and twenty thousand dollars (\$13,920,000). Absent the Regional Water Board making express findings under CWC section 13327, the statutory minimum liability is two hundred seventy-eight thousand four hundred dollars (\$278,400), calculated at \$100.00 per day per violation, multiplied by 2,784 days of violations.

### **Nature, Circumstances, and Extent**

The Discharger has violated CAO No. R5-2006-0722 by not submitting technical reports or implementing required work plans as required by Orders 4, 5, 6, 8, 9, 15, and 16 of the CAO. The Discharger has failed to comply with staff requests and the CAO to define the extent and severity of the petroleum hydrocarbon release, which has impacted groundwater and remains an unquantified threat to groundwater resources.

### **Gravity and Toxicity**

The Discharger has failed to and continued to fail to characterize the lateral and vertical extent of petroleum hydrocarbon impacts to groundwater, and have failed to and continue to fail to implement corrective action measures. Both private well owners and municipal drinking water systems use the impacted aquifer for drinking water purposes within Marysville. However, a sensitive receptor survey has not been submitted as required in the CAO. The degree of toxicity from the discharge is currently unknown.

### **Susceptibility of the Discharge to Cleanup and Abatement**

After being released into the subsurface, petroleum hydrocarbons migrate downward and laterally in soil until the release is immobilized (e.g., by an impermeable geologic layer or the water table). Once the petroleum hydrocarbons reach the water table, they pool at the top of the capillary fringe, slowly dissolving into the aquifer. While the technology to remove petroleum hydrocarbons from soil and groundwater exists and is in common use, the cleanups are expensive and typically take years to complete. In this case, the Discharger should have been eligible to be reimbursed for cleanup costs by the SWRCB's UST Cleanup Fund.

### **Ability to Pay**

Staff is not aware of any reason why the Discharger is unable to pay the liability.

### **Prior History of Violations**

The Dischargers have received a Notice of Violation for not complying with the CAO and are in continuing violation of the CAO.

### **Degree of Culpability**

The Discharger is and has been aware of staff requests and the CAO for technical reports and a subsurface investigation for more than ten years but has ignored the requests and CAO. It appears that the Discharger does not intend to comply and has stated that the unauthorized release is the fault of another party.

### **Economic Benefit or Savings Resulting from the Violation**

This amount represents the amount of the deductible for the UST Cleanup Fund, which is \$5,000. However, it is likely that the Discharger's refusal to comply with staff requests and the CAO may eventually lead to an economic detriment for the Dischargers. This site should be eligible for cleanup funds and if the ACL Order is issued, it is likely that the Discharger will no longer be eligible and that may cost the Dischargers several hundred thousand dollars.

### **Other Matters as Justice May Require**

Staff costs to generate and process the ACL Complaint are estimated to be \$13,000. We estimate that another 100 hours of work (\$13,000) will be needed to prepare the agenda material for the ACL Order and to prepare for the Regional Board presentation. Therefore, staff expects to expend 200 hours (\$26,000) to bring this matter to the Board.

### **Determination of Amount**

In consideration of the above findings, the Assistant Executive Officer on 8 July 2008 issued an Administrative Civil Liability Complaint in the amount of \$50,000 for violating provisions of the CAO.

**Recommendation**

In consideration of the above findings, Board staff recommends that the Discharger be assessed \$50,000 for violating provisions of CAO No. R5-2006-0722.